MOTION FILED OCT 27 1963

IN THE

Supreme Court of the United States

October Term, 1963.

No. 342.

FEDERAL DEPOSIT INSURANCE CORPORATION, TO THE USE OF SECRETARY OF BANKING, RECEIVER OF INTEGRITY TRUST COMPANY, TO THE USE OF BUTCHER & SHERRERD, and FIDELITY-PHILADELPHIA TRUST COMPANY, TRUSTEE,

Respondents.

v.

HARRY J. ALKER, JR. and MAMIE DU BAN, Individually and as EXECUTRIX OF THE ESTATE OF ALFRED A. DU BAN, DECEASED,

Petitioner.

PETITION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING AND SECOND PETITION FOR REHEARING.

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INDEX.

	Page
Petition for Leave to File a Second Petition for Rehearing	1
Second Petition for Rehearing	6
As to the prolongation of the proceeding	8
As to definite time for payment of note heretofore claimed by F. D. I. C.—not now claimed	9
As to time element in discovering the F. D. I. C. agreement with 12 state banks	10
As to DuBan	10
As to one-year rule	11
As to fraud	11
As to affidavits by Bank Examiners as to Knowledge of Agreement by Examiners, Discussion of same with officers of Bank, other examiners	11
As to Alker's execution of agreement terms	12
As to the F. D. I. C. lending the Integrity Bank an amount greatly in excess of the insured accounts	12
As to misconstruction by Judge Layton of orders of Court of Appeals	13
As to Fidelity-Philadelphia Trust Company, Use Plaintiffs	15
Conclusion	16
Affidavit of C. B. Matsinger Dated August 9, 1949	17
Letter From Hon. Owen J. Roberts to Hon. D. Emmert Brumbaugh Dated November 30, 1950	20

TABLE OF CITATIONS.

	Page
F. R. C. P. Rule 60(b)	13, 14, 15
Publicker v. Shallcross, 106 F. 2d 949	10

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HARRY J. ALKER, JR., AND MAMIE DU BAN, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ALFRED A. DU BAN, DECEASED,

Petitioner.

PETITION FOR LEAVE TO FILE A SECOND PETITION FOR REHEARING FOR ALLOWANCE OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the United States Supreme Court:

The petitioner, Harry J. Alker, Jr., hereby asks leave of your Honorable Supreme Court to file a second petition for rehearing of his original Petition for Certiorari to review the judgment of the United States Court of Ap-

peals for the Third Circuit in the above-captioned case, and assigns therefor the following reasons:

Your petitioner filed a Petition for Rehearing with your Honorable Court in the above matter on November 15, 1963, which Motion was refused on December 9, 1963.

Prime Federal questions of nation-wide importance are involved in this case that should be decided by this Court, as follows:

1. In the welter of cases filed herein over the intervening five months after May, 1963, your Honorable Supreme Court may have inadvertently overlooked the broad national importance of your correcting the erroneous judgment of the learned Court below.

2. This national importance is predicated upon the misapplication by the learned Court of Appeals below of the ruling of this Supreme Court in *Federal Deposit Corporation v. D'Oench Duhme & Co.*, 315 U. S. 447, to this case wherein the United States District Court found (Record: p. 502a) as a fact: "*There was no fraud of any kind involved in this matter.*"

3. The nationally *unique character* of this case is likewise shown by the lower Court's misinterpretation of Rule No. 60(b), under paragraph #5 of which the learned United States District Judge, Hon. George A. Welsh, who was also the trial judge herein, granted a new trial to these defendants and whose order granting said new trial was thereafter nullified and superseded by United States District Judge Layton, a jurist of coordinate provincial jurisdiction in Wilmington, Delaware, and hence from a separate or "foreign" district who was unfamiliar with this case and with the reasons given by the Trial Judge, Welsh, for his granting said new trial.

4. The action of said District Judge, Layton, was likewise unique and unjustified nationally in that it was *a radi-*

cal departure from the national comity and uniformity obtaining among all United States district judges of coördinate jurisdiction in that it failed to follow the prior decisions of the learned United States Court of Appeals for the Third Circuit, as rendered in *T. C. F. Film Corp. v. Gourley*, 240 F. 2d 711, and *United States v. Wheeler*, 256 F. 2d 745, both holding that a district judge should abstain from overruling the decision of another district judge of coördinate jurisdiction in the same case.

5. The decision below, which ought to be reviewed here, is also *radically unique* on a nation-wide scale in that the learned United States Court of Appeals below, to the prejudice of petitioner's rights and in deprivation of Due Process of Law, deliberately made it impossible for your petitioner to have the benefit of the Trial Judge's views by erroneously suspending said Trial Judge's right to participate further in this case and by arbitrarily confining said Trial Judge, Hon. George A. Welsh, to the hearing of innocuous "Naturalizations" and "Uncontested Motions".

6. Your Honorable Supreme Court's attention is further respectfully called to the admitted and incontrovertible fact that the respondent herein (plaintiff below) knowingly and deliberately violated the restrictions imposed by its organic Act (Sept. 21, 1950, c. 967, Sec. 2(11), 64 Stat. 873), subdivisions (e) and (f)—12 U. S. C. A. 1821—by making payments to the Integrity Trust Company's (the defunct bank) depositors "regardless of amount", i.e., greatly in excess of the lawful $5,000 insurance limitation.

This *unwarranted and illegal breach* of both law and fidelity, viz.: "*paying a million dollars as well as five thousand dollars*" (Record, pp. 80a-81a) by the respondent (plaintiff below) thereby *irreparably impaired* your petitioner's security and *vitiated the values* of petitioner's collateral in such way and amount as to render it impossible

for him ever to make secure, or to repay, said loan. Such *impoverishment*, moreover, was a deliberate *deprivation of petitioner's property without due process of law*, which the learned Court of Appeals below has now sanctioned by its refusal to affirm the grant of a new trial to petitioner by the Trial Judge, Hon. George A. Welsh, and thus permits a defrauding of all your petitioner's rights.

Petitioner therefore urgently suggests that this was deliberately done to protect the financial interests of the several State banks here involved as use-plaintiffs and otherwise and that such illegal action by Federal Deposit Insurance Corporation nullifies any application of your Honorable Court's *D'Oench Duhme* decision.

Other reasons are referred to in the second petition for rehearing hereto attached and are incorporated herein.

Your petitioner therefore prays leave to file the accompanying petition.

Respectfully submitted,

JAMES J. REGAN, JR.,
1505 Land Title Building,
Philadelphia 10, Pa.,
Attorney for Petitioner.

HARRY J. ALKER, JR.,
Petitioner,
1505 Land Title Building,
Philadelphia 10, Pa.

ORDER.

And Now, , 1963, leave is granted the petitioner to file a second petition for rehearing of the petitioner's petition for the issuance of a writ of certiorari to review the decision of the Circuit Court of Appeals for the Third Circuit in the above entitled case.

By THE COURT,

J.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1963.

No. 342.

FEDERAL DEPOSIT INSURANCE CORPORATION, TO THE USE OF SECRETARY OF BANKING, RECEIVER OF INTEGRITY TRUST COMPANY, TO THE USE OF BUTCHER & SHERRERD, AND FIDELITY-PHILADELPHIA TRUST COMPANY, TRUSTEE,

Respondents,

v.

HARRY J. ALKER, JR. AND MAMIE DuBAN, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ALFRED A. DuBAN, DECEASED,

Petitioner.

SECOND PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Harry J. Alker, Jr., prays that this Court rehear and reconsider its denial of the petitioner's petition for the issuance of a writ of certiorari to review the actions of the Circuit Court of Appeals for the Third Circuit in the above entitled case, and

RESPECTFULLY REPRESENTS

On August 6, 1963, your petitioner filed with your Honorable Court a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

On October 21, 1963 your Honorable Court denied the petition for certiorari.

On November 15, 1963, your petitioner filed with your Honorable Court a petition for rehearing, which was denied December 9, 1963.

The history of the case, questions presented, the statutes and law involved, the specifications of errors, and nearly all the reasons for granting the writ are partly set forth in the petitions for certiorari and briefs in support thereof and the subsequent motion and petition for rehearing, to which reference is made as well as the record and will not be repeated here, they being hereby made part of the record, if they have not already been so made. Additional reasons are set forth herein.

Reference is also made to the record, the various petitions and briefs filed in this matter with your Honorable Court as of October Term, 1945, No. 880, which contain further reasons why the writ should be allowed, and they are made part hereof by way of reference.

The questions and reasons given by petitioner in his Petition for Leave to File a Second Petition for Rehearing are also referred to and incorporated herein by said reference.

This is an equitable action. Neither equity nor justice has been done.

Alker had this loan which was taken over by the Integrity Trust Company, an agreement made, Mr. DuBan deposited more stock on certain conditions. In addition to the securities, Alker gave the Federal Deposit Insurance Company insurance, and assigned various fees.

The record shows he kept his part of the agreement meticulously and at great sacrifice. The Federal Deposit Insurance came into the picture and claimed it was the owner of the obligation. The Bank Examiner testified the Examiner's knew about the agreement connected with the loan, and thought it a good one. Alker, after the Federal Deposit Insurance Corporation claimed it owned the note,

kept his part meticulously. This took place for several years. Then, suddenly, when there was no default and the loan had several years to go, the Federal Deposit Insurance called the loan and claims it sold the collateral. The National Dairy refused to transfer the DuBan stock as it was advised there was no default. This proceeding was then instituted by the Federal Deposit Insurance Corporation, who claimed it owned the note and there was a default. Alker and National Dairy defended. Alker was incapacitated. When suit was first sought, all the evidence and witnesses were not available. Long litigation followed. Judge Welsh, the trial Judge, finally granted a new trial.

All sorts of proceedings were tried by plaintiffs. First one objection was interposed after another. As, after great difficulty, each one was met, the Court of Appeals sent it back for trial subject to certain conditions after having first refused a new trial and only granting it when its action in interfering was greatly criticized by various law reviews, who felt it should not have interfered but should let Judge Welsh retry the case and the objections, and then come up on appeal. This caused a lot of delay.

All of this is stated so the Court can see why it has taken so long.

As the Courts constantly have stated, time cannot count when equity and justice are involved.

As to the prolongation of the proceeding.

The plaintiffs apparently abandoned their stand that there was no time fixed for the fulfillment of the obligation which they had always taken heretofore inasmuch as witnesses were produced showing first it was five years and then ten years.

They now stress the time the litigation has extended and there must be an end to all litigation.

The Court's attention is called to the difficulty in locating the witnesses and ascertaining who they were; one

such witness, John Pellini, was absent in the Army in combat duty for three years. Mr. Santamarie had left this territory and was in the far West. He was finally located and, promptly on his return, his testimony was taken. The record shows that Alker was a sick man for a long time, and unable to work.

This is an equitable proceeding in which justice had not been done, and the many steps show that the proceeding was carried on as fast as it could.

As to definite time for payment of note heretofore claimed by F. D. I. C.—not now claimed.

Heretofore the Federal Deposit Insurance Corporation claimed, and the District Court so found, the agreement was void because it claimed no time limit was fixed. Two disinterested witnesses were later produced—one John Pellini, who had been office manager of petitioner for many years, and who was absent from the country in combat duty in the United States Army for a long time, returned to Philadelphia and his evidence was taken; to wit, that the Bank officials had notified him they were extending the loan first for five years and they required a life insurance policy for that term on petitioner, and then, at the end of that period, that it was being extended for ten years and must have insurance for that term; that they had him come to the Bank and get the new note, get it signed, and brought back to the Bank. Then Petitioner produced L. J. Santamarie who had moved to California and lived there a long time. He was located and returned to Philadelphia. He was in the life insurance business. The Bank official in charge told him they were making (first) a five year loan and must have a policy for that term to cover. They ordered him to place it, which he did. At the end of that time the Bank official in charge advised him they were extending the loan for ten more years and must have a new policy for that term; he placed a new policy for the ten years and sent it to the Bank, and the bill to Petitioner. Both witnesses tes-

tified they were advised by an officer of the Bank of the definite extensions of Alker's loan.

This eliminated the contention as to definiteness of time of the loan. Neither Federal Deposit Insurance Corporation nor the use plaintiffs have now raised it.

As to time element in discovering the F. D. I. C. agreement with 12 state banks.

It was not until years long after the suit was brought that the Federal Deposit Insurance Corporation announced in the newspapers it held the obligation for twelve state banks. This changed the picture as the State Banks would have no standing in the Federal Court. It came as a great surprise. It was a clear misrepresentation as it had always claimed it was the owner. The Federal Deposit Insurance Corporation tried to take advantage of this.

The Third Circuit Court of Appeals had recently decided in *Publicker v. Shallcross*, 106 F. 2d 949, that where there has been fraud or misrepresentation, time did not enter a matter, but it opened the matter anew. This would be true as to the present suit. As stated, the Federal Deposit Insurance Corporation had always claimed it had taken an assignment of Alker's obligation and owned the same.

Time therefore was out of the question in this equitable action.

As to DuBan.

The record clearly shows that when Mr. DuBan deposited with the loan the last 1,000 shares of National Dairy Products Corporation common stock, he did so on condition that the loan should be extended and Alker's securities should be held until the Bank gets its debt, DuBan's securities were returned to him and Alker's situation was worked out. He would not leave the stock until the Bank agreed to it. The Bank agreed to it. The record shows this; no one disputed it. The Federal Deposit

Insurance Corporation alleges it sold the collateral. It did so when there was no default. The plaintiffs should not be permitted to keep the proceeds of DuBan's stock if it broke the agreement. His stock, or whatever represents it, should be returned to him. It had no authority from him to sell the stock under the circumstances.

As to one-year rule.

The first Motion for a new trial was filed within the proper time and within the required terms, was timely filed, and that his subsequent motions for a new trial referred to and incorporated in these said provisions of the first motion, and therefore a one-year rule should not restrict the appellant in this instant case.

As to fraud.

The Court below found there was no fraud.

As to affidavits by Bank Examiners as to Knowledge of Agreement by Examiners, Discussion of same with officers of Bank, other examiners.

The State Bank examiner who examined the Bank with a Federal Bank Examiner and Federal Deposit Insurance Examiner, made three affidavits—the first in the office of the late Justice Owen J. Roberts (p. 47a) and then more affidavits, all of which are in the record. He testified that the executive officers of the Bank confirmed to the examiners that the agreement as to the Alker loan existed and the provisions thereof. They advised Examiners that Alker was living up to his agreement scrupulously and that the Bank therefore had to live up to it.

He testified the Examiner for the Federal Reserve Bank was present in 1937, 1938 and 1939, and the Examiner for the Federal Deposit Insurance Corporation was present in 1939. He testified it was good business for the Bank to make such an agreement.

He testified nothing was done that could be construed to deceive, or be designed to deceive, the creditors or the public authority, on which the Federal Deposit Insurance Corporation relied in insuring the Integrity Trust Company, was or was likely to be misled. He testified the executive officers of the Bank confirmed to the Examiners that the agreement did exist, and the terms of the agreement, that nothing was done that could be construed to deceive or be designed to deceive the creditors or the public authority, or would tend to have that effect; that there was no undisclosed or fraudulent arrangement. See Matsinger affidavit, Page 17.

The *D'Oench Duhme* case does not therefore apply.

See letter of Justice Roberts, Page 20.

As to Alker's execution of agreement terms.

The record shows the Federal Deposit Insurance Company admitted there was no default by Alker; the interest paid, the insurance maintained, the assigned fees as received paid. The record shows it also held the insurance as testified to.

Alker claims the alleged sale was illegal as the loan had several years to run and there was no default. Since then petitioner has learned the use plaintiffs a few years ago cashed the insurance and have received, according to the insurance company, $36,900.

As to the F. D. I. C. lending the Integrity Bank an amount greatly in excess of the insured accounts.

Testimony of S. Herman Hall, Liquidating Officer of F. D. I. C.

Page 81(a) Notes of Testimony:

"Q. Where a deposit was for more than $5,000.00 they didn't pay over that amount—they only paid up to that amount?

A. They paid all deposits regardless of amounts:

Q. They did pay all deposits?

A. A million dollars as well as five thousand dollars.

Q. The Federal Deposit Insurance Corporation did?

A. They did."

As to misconstruction by Judge Layton of orders of Court of Appeals.

In authorizing the new trial by the Court of Appeals the Court intended the Trial Judge to consider new evidence. Judge Layton misconstrued that and restricted petitioner to witnesses who had not testified before. There were witnesses who had testified before but who had additional evidence not theretofore given but important to a right decision of the case. This makes it important that a new trial be granted at which the parties may have *all* their witnesses present who will give all the evidence then at one hearing and the Judge will have all the facts. This is vital and Judge Layton's action was a serious error.

Apropos of our averment that Judge Layton erred by misinterpretation of Rule 60(b), attention is directed to his *error of omission* which could have been inadvertent, but is more apt to have been designed. In his opinion (p. 16a of petitioner's C. C. A. brief), Judge Layton correctly quotes Rule 60(b) in toto and verbatim. But when he tries to dispose of petitioner's new trial motion by process of elimination, the learned jurist deliberately omits the *cogently pertinent* part of Rule 60(b)(5), and quickly skips to the inapplicable generalities of 60(b)(6).

More precisely, subdivision (5) of Rule 60 shows that the *one-year limitation on* filing motions for a new trial *does not apply* when "(5) the judgment has been satisfied, released, or discharged, or a prior judgment . . . has been reversed or otherwise vacated, or *it is no longer equitable*

that the judgment should have prospective application." When, however, Judge Layton came to discuss clauses 4, 5, and 6 of Rule 60(b)—(Vide p. 17a of petitioner's C. C. A. brief) he hurried over clause (5); as follows:

> "Defendants have offered no evidence to prove that the judgment is void (clause 4), or that the judgment has been discharged, or satisfied (clause 5). The inquiry is thus greatly narrowed."

Note well, if you please, that he, Judge Layton, is the one who *thus straitened it*, and *not* Rule 60(b)(5). His Honor, Judge Layton, *refrained* from even mentioning the *most germane reason* stated in said clause 5, viz.:

> "*or it is no longer equitable that the judgment should have prospective application . . . .*"

Yet, *this is exactly the reason given by the trial judge*, Hon. George A. Welsh, for his granting a new trial to defendant-petitioner in his opinion, dated November 3, 1955 (pp. 13a, 14a of C. C. A. brief), wherein he said:

> "In our judgment *justice and equity require that defendant*, Alker, *have an opportunity to submit this type of evidence* so that any facts elucidated may be embodied in the findings of fact and conclusions of law in any opinion subsequently filed in the case. The discretion and latitude allowed a trial judge . . . must . . . be exercised . . . *with a conscientious feeling as Chancellor that these additional witnesses should be heard . . . at a new trial . . . .*" (Emphasis ours.)

Thus was it brought squarely within that *pertinently cogent phrase* of clause 5, Rule 60(b) which his Honor, Judge Layton, so conveniently avoided. Hence we strenuously urge that the learned substitute, Judge Layton, gravely erred in his zeal to vindicate the prior errors of the learned Court of Appeals (in issuing mandamus and prohibition which they later vacated) by specifically skipping the ap-

posite phrase of clause 5, and hastening to assure the legal world that clause 6 of Rule 60(b) did not warrant a new trial for the petitioner. Judge Welsh had granted said new trial under clause 5 of Rule 60(b), and it is respectfully insisted that the gross error of his Honor, Judge Layton, was merely compounded further on the affirmance thereof entered by the learned Court of Appeals below. The only method for the correction of these grave errors, which so obviously affect the proper interpretation of Rule 60(b), F. R. C. P., on a nation-wide scale, is by issuance of the Certiorari from this Honorable Supreme Court as prayed for herein.

As to Fidelity-Philadelphia Trust Company, Use Plaintiffs.

Inasmuch as the record clearly shows that Mr. William P. Gest, President of the Fidelity-Philadelphia Trust Company, was chairman of the Executive Committee of the Integrity Trust Company; that the matter of the Alker loan came regularly before the said Executive Committee, that Mr. Gest, who knew Alker, frequently asked whether Mr. Alker was keeping his part, and, when advised that Alker was, the record shows Mr. Gest said if Alker was, the Integrity must. This is an equity case. In view of Mr. Gest's connection with both companies and his familiarity with the whole transaction, the Fidelity Trust Company is estopped from claiming the agreement was illegal and not binding and therefore its claim should be dismissed.

If there ever was a case in which equity and justice required that Alker and the DuBan Estate be granted a new trial, this is it.

The Court should grant a certiorari and pass on this question, or it should refer the matter back to the District Court for a retrial at which all the witnesses and evidence should be presented, and in which Judge Welsh who knew the case from the start could at least sit in.

The matter is one of public importance.

CONCLUSION.

It is contended by the Appellant that he has a meritorious defense to the action against him and that he has clearly established misrepresentation and fraud and a great injustice and wrong has been done. Therefore, the relief requested by him should be granted by this Honorable Court and the judgment set aside, the case reopened, a full trial given him where all the witnesses may be in Court together and testify to all of the facts of which they now have knowledge, irrespective of whether they testified heretofore or not, at which time the validity of the alleged cancellation by the Federal Deposit Insurance Corporation of his loan may be decided as well as in the event it is decided the alleged cancellation of the Alker loan by the Federal Deposit Insurance Corporation is invalid, then to determine the liability of the Federal Deposit Insurance Corporation arising thereout.

Respectfully submitted,

JAMES J. REGAN, JR.,
1505 Land Title Bldg.,
Philadelphia 10, Pa.,
Attorney for Petitioner.

It is hereby certified that the preceding 2nd petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds above specified.

JAMES J. REGAN, JR.,
Attorney for Petitioner.

HARRY J. ALKER, JR.,
Petitioner.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } *ss.:*

I, C. B. MATSINGER, of 101 West Fifth Avenue, New York City, being duly sworn according to law, deposes and says:

I was a bank examiner for the State of Pennsylvania from November 1, 1929, to November 15, 1943. After that I engaged in the banking business until March 1, 1947, at Easton, Pennsylvania, since which time I have been in business in New York.

While a Pennsylvania state bank examiner, I examined the Integrity Trust Company, a Pennsylvania state banking institution, during the years 1937, 1938 and 1939. My examination was made contemporaneously with and in conjunction with the examination made by the Federal Reserve Bank in 1937 and 1938 and both the Federal Reserve Bank and the Federal Deposit Insurance Corporation in 1939. We examiners worked together in the examination. During the said examination, joint conferences were had by all the examiners with the executive officers of the bank in relation to matters requiring special attention. One of the matters which we discussed with the officers was the loan of Harry J. Alker, Jr., which was the second largest loan in the bank.

The collateral with this loan was rather unusual because it consisted of not only securities belonging to Mr. Alker and those of some friends but also of an insurance policy in the amount of $125,000 on the life of Mr. Alker, payable to the Trust Company together with an assignment of certain large legal fees due to him from the Commonwealth of Pennsylvania. The very presence of this unusual type of collateral was notice to me that there must be some kind of agreement in existence in connection with the loan, even if the officers had never said anything to me about the agreement. The presence of this unusual col-

lateral was a record by the bank that an agreement existed as to the loan.

But the executive officers of the bank would not let the matter rest and they actually confirmed to the examiners that the agreement did exist with Mr. Alker as to the loan and that the bank had entered into the agreement with Mr. Alker, which provided, among other things, that he should maintain the insurance for the term of the policy which the bank placed and pay over to the bank the assigned fees as received, pay the interest on the loan and reductions as he could. They informed us that there was some question as to the right of the bank to collect fees directly from the (fol. 48) Commonwealth earned by Mr. Alker, as the Commonwealth would not recognize assignments, and by making the agreement with Alker and living up to it the bank was sure it would get the fees, which were substantial. They advised us that Mr. Alker was living up to his agreement scrupulously and that the bank therefore had to live up to its agreement. I remember this very distinctly, as this loan was one of the largest in the Integrity and, as I said before, I examined the Integrity several times. The examiner for the Federal Reserve Bank was present in 1937, 1938, and 1939 and the examiner for the Federal Deposit Insurance Corporation was present in 1939.

I have seen copies of the original notes of Alker of 1931 and in my opinion the notations on these notes clearly refer to the Alker, DuBan agreement and the 1936 note clearly shows by the provision inserted at the bottom, a confirmation and extension of that agreement. These notes with the notations on them together with the unusual collateral for surety were all records of the Integrity Trust Company and showed that there was no secret about the matter.

The Federal Deposit Insurance Corporation made no examinations of the Integrity Trust Company until 1939

when they made a joint examination in connection with the state and Federal Reserve examiners.

In my opinion as a banker and a bank examiner of many years' experience, the presence of said term policy and the assignment of fees, together with various other collateral in other peoples' names, accompanied by powers to pledge constituted a record of the bank that such an agreement existed.

In my opinion, it was, furthermore, good business for the bank to make such an agreement. By the agreement the Integrity got a considerable amount of collateral and protection, all of which operated to the benefit of the bank and the public as well as the Federal Deposit Insurance Corporation. In my opinion nothing was done here that could be construed to deceive, or be designed to deceive, the creditors or the public authority, or would tend to have that effect.

There was no undisclosed or fraudulent arrangement. The records of the Integrity Trust Company clearly showed there was no misrepresentation or misstatement as to the Alker loan which was an asset in the portfolio of the Integrity Trust Company. The note was not designed to deceive the creditors or the public authority and would not tend to have that effect. There was no scheme or arrangement (fol. 49) whereby the banking authority, on which the Federal Deposit Insurance Corporation relied in insuring the Integrity Trust Company, was or was likely to be misled.

(Sgd.) C. B. MATSINGER.

Sworn to and subscribed before me this 9th day of August, A. D., 1949.

(Sgd.) J. J. BUCHANAN,
Notary Public.
My commission expires Feb. 1, 1953.

(Seal)

OWEN J. ROBERTS
1510 Morris Building
Philadelphia 2, Pa.
RIttenhouse 6-0650

November 30, 1950

Hon. D. Emmert Brumbaugh
Secretary of Banking
Harrisburg, Pennsylvania

Dear Mr. Brumbaugh:

Sometime ago Harry Alker consulted me about the action in the United States Court by the Federal Deposit Insurance Corporation against him and the DuBan Estate.

At that time the Circuit Court of Appeals had held the agreement made by Alker and DuBan with the Integrity Trust Company was not binding on the Federal Deposit Insurance Corporation, basing its opinion on the case of Federal Deposit Insurance Corporation vs. D'Oench, Duhme & Co., Inc., 315 U. S. 447, which was a fraud case, and citing a criminal section of the Federal Reserve Act. The District Court had held in the Alker-DuBan case there was absolutely no fraud.

I advised Harry that in my opinion the D'Oench, Duhme decision and the Criminal Section of the Federal Reserve Act were never intended to apply to anything but a fraud case and that therefore I was of the opinion he was entitled to a new trial. I thought a great wrong had been done him in the matter because there was no default in interest, Harry having completely performed his part of the agreement in all respects, which agreement the F. D. I. C. had adhered to for almost three years.

I have not changed my mind in this respect and am still of the opinion that a new trial should be granted him.

I understand the Attorney General's office and you have gone into the matter and you likewise feel that this should be done.

I therefore hope you will see your way clear to consent to it.

Yours sincerely,

OWEN J. ROBERTS

OJR:Sy